

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON**

DAVID T. GILCHRIST
Plaintiff

vs.

CAPITAL ONE SERVICES, LLC
Defendant

Case # **3:14-cv-05020-RJB**
3:14-cv-05021-RJB

Combined Cases

CIVIL COMPLAINT

**MOTION TO STRIKE IMMATERIAL DOCUMENT
AND REMAND BACK TO STATE COURT**

PLAINTIFF David T. Gilchrist moves this Honorable Court to enter an Order striking parts of the DECLARATION OF STEVEN A. MILLER IN SUPPORT OF DEFENDANT'S NOTICE OF REMOVAL regarding case number 3:14-cv-05020-RJB and case number 3:14-cv-05021-RJB, which were filed January 9, 2014, as immaterial, stating in support therefor as follows:

1. The 2nd paragraph of the, DECLARATION OF STEVEN A. MILLER IN SUPPORT OF DEFENDANT'S NOTICE OF REMOVAL, alleges in both filings for case number 3:14-MOTION TO STRIKE IMMATERIAL DOCUMENT AND REMAND BACK TO STATE COURT

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1 cv-05020-RJB and case number 3:14-cv-05021-RJB that pages 2-10 in Exhibit A's
2 documents have been properly filed in the Small Claims Department of Cowlitz County
3 District Court, Case No. 13 S 282 and Case No. 13 S 286.

4 2. Exhibit A in both declarations by Steven A. Miller in case number 3:14-cv-05020-RJB and
5 case number 3:14-cv-05021-RJB are comprised of 11 pages each. Page 2 on both exhibits
6 were the actual complaints filed in the Small Claims Department of Cowlitz County
7 District Court, Case No. 13 S 282 and Case No. 13 S 286. Pages 3-10 of exhibit A in both
8 declarations show Plaintiff's "Verified Complaint for Relief". This "Verified Complaint for
9 Relief" was:

10 a) Not filed with the small claims court as alleged by attorney Steven A. Miller.

11 b) Not properly signed by the Plaintiff.

12 c) Not containing the Plaintiffs address, email or phone number.

13 3. This "Verified Complaint for Relief" document should be stricken pursuant to Rule 3 of
14 the Civil Rules for Courts of Limited Jurisdiction and Rule 3 of the Federal Rules of Civil
15 Procedure which both state in part:

16 **"A civil action is commenced by filing a complaint with the court."**

17 The "Verified Complaint for Relief" document was not filed in the Small Claims
18 Department of Cowlitz County District Court. Therefore, the only document to be
19 considered is the filed pleading.

20 4. Secondly, this "Verified Complaint for Relief" document should be stricken pursuant to
21 Rule 11(a) of the Civil Rules for Courts of Limited Jurisdiction and Rule 11(a) of the
22 Federal Rules of Civil Procedure which states in part:

1 “...The court must strike an unsigned paper unless the omission is promptly corrected after being
2 called to the attorney's or party's attention.”[Emphasis mine]

3 5. Second, the TCPA statute 47 USC § 227, can be brought into the Small Claims Department
4 of Cowlitz County District Court because it is a court with proper subject matter
5 jurisdiction. There is no need for remand.

6 WHEREFORE, Plaintiff David T. Gilchrist moves this Court to enter an Order striking
7 from the record the “Verified Complaint for Relief” found in pages 3-10 of Exhibit A in case
8 number 3:14-cv-05020-RJB and case number 3:14-cv-05021-RJB and remanding back to the
9 Washington State Small Claims Department of Cowlitz County District Court, Case No. 13 S 282
10 and Case No. 13 S 286, granting such other and further relief as the Court may deem reasonable
11 and just under the circumstances.

12 DATED this 4th day of February, 2014

Respectfully submitted

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14 _____
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15 (360) 423-1196
Email: mortetyranni1776@hotmail.com

16 Plaintiff
17
18
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CERTIFICATE OF SERVICE

1 UNDER PENALTY OF PERJURY, I CERTIFY that a copy of the foregoing was provided
2 by regular U.S. mail to Steven A. Miller, attorney with Graham & Dunn PC, Pier 70, 2801
3 Alaskan Way, Suite 300, Seattle, WA 98121-1128 this 31st day of January 2014.
4
5
6

7 _____
8 David T. Gilchrist
9 457 21st Ave
10 Longview, WA 98632
11 (360) 423-1196
12 Email: mortetyranni1776@hotmail.com

13 Plaintiff

14 STATE OF WASHINGTON
15 COUNTY OF COWLITZ

16 BEFORE ME personally appeared David T. Gilchrist who, being by me first duly sworn
17 and identified in accordance with Florida law, did execute the foregoing in my presence
18 this ____ day of _____ 2014.
19

20 _____
21 Notary Public

22 My commission expires:

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